

## **REMARKS/ARGUMENTS**

Applicants have reviewed and considered the Final Office Action mailed on June 20, 2008, and the references cited therewith. Claims 1-19 are currently pending in the application. Claims 1, 3, 5, 9, 10, and 19 are amended. Support for the claim amendments can be found in the claims as originally filed, and in the Applicants' patent application on at least page 5, lines 1-19; page 16, lines 4-6; page 18, lines 18-20; and Figures 10, 15, and 16. Reconsideration and allowance of all pending claims are respectfully requested in view of the following remarks.

### **Claim Rejection – 35 U.S.C. § 103; Claims 1-6, 9, 10, and 12-17**

The Examiner rejects claims 1-6, 9, 10, and 12-17 as obvious over U.S. Patent 5,827,246 (hereinafter "Bowen") in view of U.S. Patent 3,978,855 (hereinafter "McRae") and further in view of U.S. Patent 5,419,913 (hereinafter "Podell"). This rejection is respectfully traversed. With regard to claims 1 and 10, the Examiner states that:

With respect to Claims 1, 10 : Bowen teaches a porous pad 40 (Fig. 2) that is permeable to liquids including a porous body 44 having at least a partial outer surface and an inner body. The outer surface (opposite manifold 42 in Fig. 2) is adapted for contact with a surface of a wound and has pores 54 therein of a first average size to enhance biocompatibility, said porous pad 40 to be introduced onto or into a wound so as to be in contact with said wound and with said outer surface adjacent said wound; a vacuum canister 28 for collecting fluids sucked from said wound by a negative pressure source 32 connected to said porous pad 40 through a drainage tube 30.

Bowen does not teach that said pad 40 is secured in or on said wound by a dressing cover for providing a seal around said wound and said porous pad. Podell teaches a surgical drape comprised of a flexible elastomeric material. Since the devices of Bowen and Podell seek to solve a similar problem in the art (i.e. provide a protective cover for a wound) it would be obvious to one of ordinary skill in the art to modify the device of Bowen so as to provide a dressing cover for said vacuum pad with a reasonable expectation of success. ('246, any figure, Col. 6, lines 44-49; '913, Col. 3, lines 5-7)

The combined teaching of Bowen and Podell does not teach that pad 40 has an outer surface with pores of a first size contacting the wound or an inner body with pores of a second average size that is greater than the pores in the outer surface of said first average size. McRae teaches a wound dressing comprised of open-celled

polyurethane foam (Col. 4, lines 53-58) McRae teaches that the polyurethane dressing is compressed to cause cells near at least one surface of said foam to collapse either temporarily or permanently, decreasing their pore size and thus creating a microporous skin on at least that particular surface area, leaving the cells in areas remote from said skin at their original size (now larger compared to the pores at the skin surface). McRae teaches that said first and second pore sizes are to promote sufficient wicking and absorption at the microporous skin surface that is adjacent the wound surface and the larger size is to allow ready absorption while still being small enough to be capable of prohibiting excess exudate absorbed by the microporous skin to pass into the remote region. Therefore it would be obvious to one of ordinary skill in the art to modify the dressing of Bowen to have a vacuum pad comprised of the polyurethane foam taught by McRae having an outer surface with pores of a first average size and an inner body with pores of a second average size greater than said first average size as taught by McRae to promote sufficient wicking and absorption at the outer surface that is adjacent the wound surface and to allow ready absorption while still being small enough to be capable of prohibiting excess exudate absorbed by the microporous skin to pass into the inner body. (Office Action dated June 20, 2008, pages 3 and 4).

No *prima facie* obviousness rejection may be stated against claim 1 because Bowen, McRae, and Podell fail to teach or suggest all of the features of claim 1. In addition, the combination of Bowen and Podell renders Bowen unsatisfactory for Bowen's intended purpose. In addition, Bowen may not be combined with Podell to correct the deficiencies of Bowen in an obviousness rejection against claim 1 because the Examiner fails to state a sufficient reason to combine the references under *KSR Int'l. Co. v. Teleflex, Inc.*, 127 S.Ct. 1727 (U.S. Apr. 30, 2007).

I. Bowen, McRae, and Podell Fail to Teach or Suggest All of the Features of Claim 1

The Examiner bears the burden of establishing a *prima facie* case of obviousness based on prior art when rejecting claims under 35 U.S.C. § 103. *In re Fritch*, 972 F.2d 1260, 23 U.S.P.Q.2d 1780 (Fed. Cir. 1992). Additionally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). Therefore, the

Examiner fails to state a *prima facie* obviousness rejection if the proposed combination does not teach or suggest all of the features of the claimed invention.

A *prima facie* obviousness rejection cannot be stated because Bowen, McRae, and Podell do not teach or suggest all of the features of claim 1. Specifically, Bowen, McRae, and Podell fail to teach or suggest at least a porous pad distributing negative pressure to a wound. The Examiner cites both Bowen and McRae against the feature of a porous pad. With respect to Bowen, the Examiner cites the vacuum pad disclosed in Bowen against the feature of a porous pad. The vacuum pad is described in the following portion of Bowen:

In accordance with teachings of the present invention, disadvantages and problems associated with previous equipment and methods for collecting potentially hazardous fluids have been substantially reduced or eliminated. The present invention includes a vacuum pad fabricated from corrugated material with a plurality of openings in one side of the pad to allow potentially hazardous fluids to flow into the corrugated material. The opposite side of the pad provides a fluid impervious barrier to prevent the potentially hazardous fluids from contacting the floor or supporting structure on which the pad is resting. A manifold is formed as part of the pad for connection to a source of vacuum such that potentially hazardous fluids may be drawn through the holes in the pad, the corrugated material, the manifold and into an appropriate container. The vacuum pad may be used for many functions such as collecting fluids which fall from an operating room table. (Bowen, column 2, lines 17-33, emphasis added).

Bowen discloses an apparatus for collecting fluids from medical procedures, laboratory testing, or industrial processes using a vacuum pad placed on the floor or an appropriate supporting structure adjacent to a potential source of hazardous fluids. The cited portion discloses that the vacuum pad prevents fluids from contacting the floor or a supporting structure. On the other hand, claim 1 recites a porous pad distributing negative pressure to a wound. Bowen differs from the claimed feature because neither the cited portion nor any other portion of Bowen teaches or suggests that the vacuum pad distributes negative pressure to a wound, and instead discloses only that reduced pressure is distributed to a vacuum pad that rests on a floor or supporting structure. Thus, Bowen fails to teach or suggest this claimed feature.

The Examiner also cites the following portion of McRae against the feature of a porous pad:

The foam cells remote from said surface remain unchanged at a pore size greater than about 200 micrometers so as not to be readily absorbent but to still allow excess exudate to be rejected from said collapsed microporous surface into the remote, unchanged cells of the original foam and held therein as if in a reservoir. (McRae, column 4, lines 53-58).

McRae discloses an open-celled polyurethane foam article, which may be modified to have absorbent properties. The cited portion describes the pore size and absorbent characteristics of the foam. Claim 1, on the other hand, recites a porous pad distributing negative pressure to a wound. McRae differs from the claimed feature because McRae discloses only that the foam absorbs fluid, such as exudate, but nowhere teaches or suggests that the foam distributes negative pressure to a wound. Thus, McRae fails to teach or suggest this claimed feature.

In addition, Podell discloses only adhesive bandages, wound dressings, suture-like mechanisms, and surgical drapes, none of which distribute negative pressure to a wound. Thus, Bowen, McRae, and Podell, alone or in combination, fail to teach or suggest all of the features of claim 1.

## II. The Proposed Combination Renders Bowen Unsatisfactory for Bowen's Intended Purpose

The Examiner fails to state a *prima facie* obviousness rejection because the proposed modification renders Bowen unsatisfactory for Bowen's intended purpose. "If [the] proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification." MPEP 2143.01 (citing *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984)).

The intended purpose of Bowen is to collect fluids from medical procedures, laboratory testing, or industrial processes using a vacuum pad placed on the floor or an appropriate supporting structure adjacent to a potential source of hazardous fluids.

Bowen achieves this purpose by providing a vacuum pad that is capable of absorbing fluids.

The Examiner proposes “modify[ing] the device of Bowen so as to provide a dressing cover for said vacuum pad.” (Office Action dated June 20, 2008, pages 3 and 4). However, Podell discloses that the dressing cover disclosed therein is not permeable to liquid, such as water droplets. For example, Podell discloses as follows:

It is another object of the invention to provide adhesive bandages, wound dressing, suture-like mechanisms, and drapes which utilize a treated rubber which permits water vapor and oxygen to pass therethrough, without permitting passage of water droplets or microbial agents. (Podell, column 2, lines 50-55).

Thus, the combination of Bowen and Podell renders Bowen unsatisfactory for Bowen’s intended purpose because covering Bowen’s vacuum pad with Podell’s dressing cover, as the Examiner proposes, would prevent Bowen’s vacuum pad from collecting liquids that fall toward the vacuum pad. In fact, such combination renders Bowen inoperable for Bowen’s intended purpose. Consequently, no *prima facie* obviousness rejection has been stated against claim 1.

### III. The Examiner Fails to State a Sufficient Reason to Combine the References

The Examiner bears the burden of establishing a *prima facie* case of obviousness based on prior art when rejecting claims under 35 U.S.C. § 103. *In re Fritch*, 972 F.2d 1260, 23 U.S.P.Q.2d 1780 (Fed. Cir. 1992). The scope and content of the prior art are ... determined; differences between the prior art and the claims at issue are ... ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background the obviousness or non-obviousness of the subject matter is determined. *Graham v. John Deere Co.*, 383 U.S. 1 (1966). Often, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue. *KSR Int’l. Co. v. Teleflex, Inc.*, 127 S.Ct. 1727

(U.S. Apr. 30, 2007). Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. *Id.* (citing *In re Kahn*, 441 F.3d 977, 988 (CA Fed. 2006)).

In the case at hand, no *prima facie* obviousness rejection can be stated because the Examiner failed to state a sufficient reason to combine Bowen and Podell in light of the differences between the cited references and claim 1. Specifically, as shown in Section I., neither Bowen nor Podell teach or suggest a porous pad distributing negative pressure to a wound.

Furthermore, the Examiner failed to state a sufficient reason to combine Bowen and Podell in light of the differences that exist between the cited references and claim 1. Specifically, the Examiner proposes combining Bowen and Podell “[s]ince the devices of Bowen and Podell seek to solve a similar problem in the art (i.e. provide a protective cover for a wound).” (Office Action dated June 20, 2008, page 3). However, this reason for combining Bowen and Podell is not actually true because Bowen does not seek to solve the problem of providing a protective cover for a wound. In particular, Bowen nowhere discloses that the vacuum pad disclosed therein contacts or covers a wound in any way, and instead discloses only that the vacuum pad is placed on a floor or supporting structure.

Because the proposed advantage provided by the Examiner is not actually true, the cited advantage cannot provide a rational underpinning to support a legal conclusion of obviousness. For this reason, the Examiner’s reason for combining Bowen and Podell provides insufficient basis for combining Bowen and Podell in the manner proposed by the Examiner, especially in light of the major differences that exist between the cited references and claim 1. Accordingly, no *prima facie* obviousness rejection has been stated against claim 1.

#### IV. Conclusion as to Obviousness

The same or similar arguments presented in Sections I.-III. may be made for claim 10 as well. In addition, no *prima facie* obviousness rejection can be stated

against claims 2-6, 9, and 12-17 at least by virtue of these claims' dependency on claims 1 and 10. These claims also recite other additional features or combinations of features not taught or suggested by the references.

For example, Bowen, McRae, and Podell fail to teach or suggest the feature wherein said seal is air-tight, as claimed in claims 14 and 15. The Examiner cites the following portion of Podell against this claimed feature:

The hydrogel adhesive is preferably hypoallergenic and uses a cellulosic, polyurethane, or polyacrylate base. (Podell, column 3, lines 24-26).

The cited portion discloses only the material from which a hydrogel adhesive is made, but fails to teach or suggest that the hydrogel adhesive is air-tight. In fact, Podell explicitly discloses otherwise. In particular, Podell discloses that "[i]t is another object of the invention to provide adhesive bandages, wound dressing, suture-like mechanisms, and drapes which utilize a treated rubber which permits water vapor and oxygen to pass therethrough." (Podell, column 2, lines 50-53). Thus, Podell fails to teach or suggest this claimed feature. Bowen and McRae also fail to teach or suggest this claimed feature. Therefore, the rejection of claims 1-6, 9, 10, and 12-17 under 35 U.S.C. § 103 has been overcome.

*Claim Rejection – 35 U.S.C. § 103; Claim 7*

The Examiner rejects claim 7 as obvious over Bowen in view of McRae and further in view of Podell and further in view of U.S. Patent 4,997,425 (hereinafter "Shioya"). This rejection is respectfully traversed.

The rejection of claim 7 relies on the false premise that Bowen, McRae, and Podell teach or suggest all of the features of claim 1, from which claim 7 depends. However, as shown above, Bowen, McRae, and Podell fail to teach or suggest at least a porous pad distributing negative pressure to a wound. Bowen, McRae, and Podell's deficiencies with respect to claim 1 are not cured by Shioya, and the Examiner does not assert otherwise. Therefore, Bowen, McRae, Podell, and Shioya, alone or in combination, fail to teach or suggest all of the features of claim 7.

Claim Rejection – 35 U.S.C. § 103; Claims 8, 11, 18, and 19

The Examiner rejects claims 8, 11, 18, and 19 as obvious over Bowen in view of McRae and further in view of Podell and further in view of U.S. Patent 6,252,129 (hereinafter "Coffee"). This rejection is respectfully traversed.

The rejection of claims 8, 11, 18, and 19 relies on the false premise that Bowen, McRae, and Podell teach or suggest all of the features of claims 1 and 10, from which claims 8, 11, 18, and 19 depend. However, as shown above, Bowen, McRae, and Podell fail to teach or suggest at least a porous pad distributing negative pressure to a wound. Bowen, McRae, and Podell's deficiencies with respect to claims 1 and 10 are not cured by Coffee, and the Examiner does not assert otherwise. Therefore, Bowen, McRae, Podell, and Coffee, alone or in combination, fail to teach or suggest all of the features of claims 8, 11, 18, and 19.



**CONCLUSION**

If a Petition for Extension of Time under 37 C.F.R. 1.136(a) is required, the petition is herewith made. The Commissioner is authorized to charge any fees that may be required, or credit any overpayment made with this Office Action, to Deposit Account Number 19-3140.

In light of all the foregoing, believing that all things raised in the Final Office Action have been addressed, Applicant respectfully requests reconsideration of the prior rejections and objections, as well as allowance of the claims and passage of the application to issue. If the Examiner would care to discuss any remaining matters by phone, Applicant invites the Examiner to contact the undersigned at (214) 259-0900.

Respectfully submitted,



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